

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Children’s Television Programming Rules)	MB Docket No. 18-202
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. (“Nexstar”), the licensee of 157 full-power and Class A television broadcast stations, respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking in the above-captioned proceeding, which proposes to modernize the children’s television programming rule 47 CFR §73.671 (the “KidVid Rule”).¹ The KidVid Rule requires, among other things, that all television broadcasters provide an average of 3.0 hours per stream per week of core children’s programming,² in a rigidly structured broadcast schedule, as well as onerous quarterly reporting requirements. Because of the dramatic changes in viewer habits over the last several decades, including how, when and where viewers consume programming, the Commission is proposing to revise or eliminate certain portions of the KidVid Rule with the goal of increasing broadcasters’

¹ *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission’s Rules Regarding Posting of Station Licenses and Related Information*, Notice of Proposed Rulemaking, MB Docket No. 18-121, FCC 18-61 (rel. May 10, 2018) (“*NPRM*”).

² Core Children’s Programming is defined as (1) serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) at least 30 minutes in length; (3) aired between the hours of broadcasters 7:00 a.m. and 10:00 p.m.; (4) a regularly scheduled weekly program; (5) the program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I; (6) instructions for listing the program as educational/informational, including an indication of the intended age group, are provided to publishers of program guides; and (7) the educational and informational objective and the target child audience are specified in writing in the licensee’s children’s programming report. *See* 47 CFR §73.671(c).

flexibility to fulfill their obligation to serve the educational and informational needs of children through targeted programming while eradicating unnecessary burdens and redundancies.³

Nexstar agrees with the Commission that the video programming landscape has changed dramatically since the Commission first adopted rules implementing the Children’s Television Act more than 20 years ago.⁴ For example, in 1990, 98.2% of U.S. households had a television,⁵ and children from ages 2 to 17 watched on average more than 3 hours of television each day.⁶ In 2018, 96.5% of the U.S. households have a television,⁷ yet traditional television viewing averages two hours or less per day for children 17 years old and younger.⁸ Moreover, although television set ownership has remained robust over the last 30 years, traditional viewership for most age groups, except 50-64 and 65+, has declined exponentially.⁹

The two most significant contributors to the viewership shift are the availability of the internet and the availability of alternate program providers, which include basic and premium cable providers (such as Baby First TV Network, Discovery Family, Disney, Disney Jr., Universal Kids

³ NPRM ¶ 29.

⁴ NPRM ¶ 16. *See also* Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394 (“CTA”).

⁵https://webcache.googleusercontent.com/search?q=cache:lZtN3tzGGaIJ:https://www.tvb.org/Portals/0/media/file/TV_Households.pdf+&cd=10&hl=en&ct=clnk&gl=us (last visited on Sept. 20, 2019).

⁶ *Policies and Rules Concerning Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111 (1991), *recon. granted in part*, 6 FCC Rcd 5093, 5095 (1991).

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https://webcache.googleusercontent.com/search?q=cache:lZtN3tzGGaIJ:https://www.tvb.org/Portals/0/media/file/TV_Households.pdf+&cd=10&hl=en&ct=clnk&gl=us (last visited on Sept. 20, 2019).

⁸ <https://www.marketingcharts.com/featured-24817> (last visited Sept. 20, 2018).

⁹ *See The State of Traditional TV: Updated With Q2 2017 Data*, published Dec. 13, 2017, <https://www.marketingcharts.com/featured-24817> (citing “...a substantial 17.6% drop year-over-year (much larger than in Q1 2017) and a massive 45.5% contraction since 2012) (see also “Everything is Netflix” This Could Be The Worst Year For Kid’s TV, <http://fortune.com/2018/04/25/netflix-kids-cable-tv/> (last visited on Sept. 20, 2018).

and several others), online program and over the top providers (“OTT”), including YouTube and Netflix, respectively. The popularity of Netflix, which includes network, syndicated and original programming, including significant investments in children’s shows, has far surpassed traditional program providers.¹⁰ This alternate pool of programming has shifted consumption to the increasingly affordable adoption of other “screens”, which extend the viewing experience beyond the television and living room. For example, children eight years or younger consume approximately 2.2 hours of programming per day, but 48 minutes, of that consumption is through a mobile device or tablet.¹¹ Even more telling is the fact that tablet ownership by eight-year-old children increased 41% between 2011 and 2017¹² and that, “[f]amilies with children under nine years old are more likely to have a subscription video service, such as Netflix, than a cable subscription, at 72 and 65 percent, respectively.”¹³ Other milestones provide additional context to the evolution of change between 1990 and present:

1991 – The World Wide Web/internet goes public.¹⁴

1997 – 37M U.S. households own a personal computer, 18% of which have online internet access.¹⁵

1997 – Netflix is launched.¹⁶

¹⁰ <https://www.mediagrouponlineinc.com/2018/07/17/netflix-is-americans-platform-of-choice-for-tv-content/> (last visited on Sept. 20, 2018).

¹¹ <https://thejournal.com/articles/2017/10/23/report-2-in-5-kids-8-and-under-have-their-own-tablets.aspx> (last visited on Sept. 20, 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ <https://thenextweb.com/insider/2011/08/06/20-years-ago-today-the-world-wide-web-opened-to-the-public/> (last visited on Sept. 20, 2018).

¹⁵ <https://www.census.gov/data/tables/2012/demo/computer-internet/computer-use-2012.html> (last visited on Sept. 20, 2018).

¹⁶ <https://qz.com/1062888/netflix-was-founded-20-years-ago-today-because-reed-hastings-was-late-a-returning-video/> (last visited on Sept. 20, 2018).

1998 – Google is founded.¹⁷

2004 – 63% of the U.S. population uses the internet.¹⁸

2005 – YouTube.com is launched.¹⁹

2006 – 71% of the U.S. population uses the internet,²⁰ and 73% of the adult U.S. population owns a cellphone.²¹

2015 – 84% of the adult U.S. population uses the internet.²²

2018 – 89% of the adult U.S. population uses the internet,²³ and 95% of the adult U.S. population owns a cellphone, 77% of which are smart phones capable of accessing the internet.²⁴

The changes, driven by improved technology and the widespread availability and nearly universal adoption of the internet, provide viewers, including children, with the ability to consume programming anytime and anywhere using a multitude of screens. According to Pew Research, 61% of viewers between the ages of 18-29, and 37% of viewers between the ages of 30-49, opt to watch television via a streaming service.²⁵ It is indisputable that given these technological and

¹⁷ <https://www.google.com/about/our-story/> (last visited on Sept. 20, 2018).

¹⁸ <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/> (last visited on Sept. 20, 2018).

¹⁹ <https://www.businessinsider.com/key-turning-points-history-of-youtube-2013-2> (last visited on Sept. 24, 2018).

²⁰ <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/> (last visited on Sept. 20, 2018).

²¹ <http://www.pewinternet.org/fact-sheet/mobile/> (last visited on Sept. 20, 2018).

²² According to the Pew Research Group, the most active internet users were - 96% of 18-29 year olds, and 93% of 30-49 year olds. <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/> (last visited on Sept. 20, 2018).

²³ <http://www.pewinternet.org/fact-sheet/internet-broadband/> (last visited on Sept. 20, 2018).

²⁴ <http://www.pewinternet.org/fact-sheet/mobile/> (last visited on Sept. 20, 2018).

²⁵ <http://www.pewresearch.org/fact-tank/2017/09/13/about-6-in-10-young-adults-in-u-s-primarily-use-online-streaming-to-watch-tv/> (last visited on Sept. 20, 2018).

consumer changes, the KidVid Rule, established 27 years ago, even as most recently modified in 2006, is ripe for change.

The current obligations unnecessarily consume administrative and financial resources, deprioritize local programming, and result in lost revenue. For example, more than 75 percent of Nexstar's general managers report not airing local sports programs, health specials, parades, debates and national breaking news as well as preempting their stations' local news or not producing additional local news programs – all due to the FCC's current KidVid requirements. In one instance, due to children's programming obligations, Nexstar's station was unable to broadcast a six-week program and forum on the opioid crisis that would have, among other things, informed viewers where to get assistance in the community. Multiple Nexstar stations report being unable to provide local news or local sports programming on the weekends due to children's televisions programming obligations. Further, Nexstar's stations are regularly confronted with how to resolve preemptions, which are unavoidable due to current events and network obligations.²⁶ The children's programming obligations result in lost revenues for the stations – revenues lost from local advertisers who do not find value in advertising in children's programming, revenues from lost sponsorships of local events such as parades and other special events, and revenues lost from the opportunity to provide weekend news and public affairs programming because that is the home of the stations' children's programming. Therefore, Nexstar supports the Commission's intention to modify the definition of core programming, streamline the KidVid reporting obligations, increase flexibility for multicasting stations and reduce the burden of rescheduling preemptions for affected stations.

²⁶ Stations are often confronted with how to resolve network sports preemptions and it is frequently local programming which is sacrificed in order for the station to meet its children's television programming obligation.

Nexstar recommends changes to the definition of core programming, including eliminating the mandatory program duration of 30 minutes or more, expanding the program safe harbor period to 5:00 a.m. to 11 p.m. (or eliminating it altogether), eliminating the obligation to run children's programming in a regularly scheduled weekly date/time slot, and eliminating the requirement that broadcasters specify, in writing, "the educational and informational objective and the target child audience."²⁷ Nexstar also proposes that (i) the obligation to air an average of 3 hours per stream should be refined to a maximum of 3 average hours per television license; and (ii) the children's television reporting and certification obligations be modified from a quarterly basis to an annual basis. Finally, Nexstar recommends that the ability to make good on preemptions be expanded beyond the second home position to any time during that respective quarter with viewer notice.

The Commission previously acknowledged,²⁸ and again reiterates in this NPRM, "that short segments can serve the educational and informational needs of children."²⁹ Therefore, the elimination of the existing 30-minute program minimum would create opportunities for broadcasters to produce or procure higher quality, local facing or focus driven children's programming and/or Public Service Announcements instead of settling for canned, rule compliant, programming widely available from networks and syndicators. Broadcasters are constrained to procure such pre-packaged KidVid programming to meet the existing 30-minute minimum and regularly scheduled weekly program core programming requirements. Under the current obligations, undertaking production at the station level of a 13-week, regularly scheduled, 30 minute per episode series directed at children 16 years of age or younger is time and cost

²⁷ NPRM ¶ 19.

²⁸ *Id.* at ¶ 20.

²⁹ *Id.*

prohibitive. Accordingly, the current rule disincentivizes one-time KidVid productions or specials created by broadcasters, or even other program providers, regardless of duration, since those programs would only be considered non-core programming and not necessarily cost effective or beneficial from compliance perspective.

Nexstar further notes that due to the decline of appointment viewing, the mandate that core programming be required on a regularly scheduled weekly basis is inefficient, nonproductive and unwarranted given the dramatic changes in viewer habits, including use of inexpensive OTA DVRs, and alternate non-broadcast options such as OTT providers Netflix, YouTube.TV, Hulu and Amazon Prime, as well as online free sources offering children's programming. PBS, with 350 stations, covering all 50 states and the U.S. Territories, offers a free PBS KIDS 24/7 channel and live stream, which is available to more than 95% of U.S. TV households.³⁰

In addition, considering the overall availability and proliferation of KidVid programming readily available, non-subscription services, including PBS KIDS, YouTube Kids and other internet sources, the required minimum 3.0 average hours per week is unnecessary to ensure that children have access to a variety of educational and informational programming.³¹ Accordingly, Nexstar encourages the Commission to modify (or eliminate) the regularly scheduled, 30 minute programming requirement in order to permit television broadcasters with the opportunity to present a variety of programs, including locally produced programs relevant to the station's immediate community, as well as programs of various lengths.

Nexstar further encourages the Commission to eliminate the overly burdensome per stream minimum hourly requirement. As indicated above, the pervasiveness of free streaming and OTA

³⁰ <http://www.pbs.org/about/blogs/news/pbs-kids-announces-six-new-licensing-partnerships/> (last visited on Sept. 20, 2018).

³¹ NPRM ¶¶ 1-2.

children’s programming, like YouTube Kids and PBS KIDS, provides significant evidence that the current obligation for television stations to provide, at a minimum of 3.0, 6.0, 9.0 or 12.0 average hours of children’s programming per week (based on the number of multicast streams a station broadcasts), is no longer necessary to ensure that children, 0 – 16 years of age, have ready access to educational and informational programming. Moreover, Congress never expressly identified a quantitative measure of mandatory programming, nor encouraged the Commission to establish such a bright line value.³²

In addition, the existing 3.0 average hours per stream quantitative requirement is only part of the resource expenditure. Stations are required to identify, procure, schedule, preempt and report on the children’s television programs provided on each additional stream as well. The burden of providing an additional 3.0 average hours of children’s television for every stream disincentivizes broadcasters from expanding their program offerings to all other viewers beyond their primary station. This results in the inefficient use of spectrum and a restriction of programming choices in general, and the burden is not necessarily lessened by a broadcaster’s option to determine how to distribute the children’s television programming across the multicast streams, six hours is six hours no matter how you divide it. Nexstar recommends the Commission eliminate the per stream requirement and allow broadcasters to provide a collective average of 3.0 hours across all streams in order to satisfy Congress’s educational and informational mandate established by the CTA.

Nexstar further proposes the Commission reduce the reporting obligations imposed upon stations. Commercial broadcasters are required to prepare and submit quarterly children’s

³² At the point of passage, a member of the respective congressional committee expressly stated that “[t]he Committee does not intend that the FCC interpret this legislation as requiring or mandating quantification standards governing the amount or placement of children’s educational and informational [programming] that a broadcast licensee must air to pass a license renewal review pursuant to this legislation.” *See* Congressional Record (July 19, 1990) 136, S10122.

television reports, which often run 30-40 pages in length and do not substantially vary from quarter to quarter. Nexstar agrees with the Commission's recognition that "requiring broadcasters to file these reports on a quarterly basis [does not] serve any useful purpose today."³³ From a negative resource perspective, and as part of the Public Inspection File Rule,³⁴ the Commission must host copies of all children's television reports for each station's current eight-year license term. Nexstar respectfully requests relief in the modification of the reporting requirement from the current quarterly obligation to an annual obligation. This consolidated reporting modification should also be extended to the requisite children's television commercial limits and website certifications,³⁵ which are directly associated with the relevant reported children's television programming and also required to be filed on a quarterly basis.

Nexstar also encourages the Commission to further streamline the reporting process by eradicating the need to include the "educational and informational purpose and the target age group" details for each program. Program content information or summaries are generally available on the internet for parental consideration and, moreover, the act of providing a program narrative does not necessarily incentivize broadcasters to "devote attention to the goals of Core Programming."³⁶ Since broadcasters generally purchase rule compliant children's television programming packages, the narratives are usually provided by the program provider.

Lastly, Nexstar urges the Commission to expand broadcaster's ability to reschedule preempted programming beyond the current seven day and "second home" window. The vast

³³ NPRM ¶ 30.

³⁴ 47 CFR § 73.3526(e)(11)(iii).

³⁵ 47 CFR § 73.3526(e)(11)(ii).

³⁶ NPRM ¶ 32.

majority of Nexstar's stations' preemptions are the result of obligations to broadcast national network sporting events (e.g., the Olympics, World Cup, college football, major golf tournaments) and breaking network news coverage. The limitations on where and when a station makes good its children's programming force stations to weigh the consequences of noncompliance against bumping other regularly scheduled, and oftentimes local, programming. Although sometimes unavoidable, bumping local programming creates a negative relationship between the stations and their community and stations and their local content providers, each of which may not be aware or sympathetic to the regulatory implications suffered by broadcasters if they fall short on children's programming requirements. With increased flexibility to reschedule preempted programming, with notice to the viewers, to some point within the quarter, broadcasters would be in a better position to maintain positive relationships with their communities and local content providers. Accordingly, Nexstar requests that the Commission extend the preemption period to any point within the reporting quarter.

Modifying or eliminating certain programming and reporting obligations within the KidVid Rule will serve the public interest by reducing unnecessary and burdensome obligations on television broadcast stations, while ensuring their ability to serve young viewers in today's digital access world. By eliminating the mandatory 30 minute program requirement as well as the mandatory same time each week requirement, the Commission will permit broadcasters to increase the diversity of programming offered to children. Moreover, eliminating the redundant quarterly filing obligations will minimize both the Commission's administrative and resource burdens associated with the review and maintenance of unnecessary and redundant documentation, as well as the burdens these reporting obligations places on the stations. Moreover, eliminating the preemption and makegood obligations will allow broadcasters to serve the needs of all viewers

with community oriented, local programming without a loss of service to younger viewers. Finally, the elimination of these rules advances the Commission's ongoing efforts to modernize the media regulations. For the foregoing reasons, the Commission should modify or eliminate the quantitative thresholds regarding the amount, placement, duration and disclosure of programming required by the Commission's children's programming rule - 47 CFR § 73.671.

Respectfully submitted,

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